

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Petitions for	)	
Declaratory Ruling on Issues	)	
Contained in the Access Charge	)	WT-01-316
Litigation between Sprint PCS and	)	
AT&T	)	

**COMMENTS OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP**

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## **I. INTRODUCTION**

This case is a dispute between Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint PCS”) and AT&T Corp. (“AT&T”) regarding the payment of access compensation for the termination of traffic that is delivered by AT&T to Sprint PCS. The Missouri Small Telephone Company Group (MoSTCG)<sup>1</sup> believes that Sprint PCS is entitled to compensation for the use of its network by AT&T, and that AT&T should be held responsible for the payment of this compensation.

## **II. EXECUTIVE SUMMARY**

Sprint PCS is entitled to be compensated for the use of its network by AT&T and other IXCs. If AT&T wants to use Sprint PCS’ facilities to terminate long distance calls that AT&T’s customers make to Sprint PCS’ customers, then AT&T must compensate Sprint PCS. Because AT&T is the responsible party for the long distance traffic that it delivers to Sprint PCS, the LEC who provided origination of the call cannot also be held responsible to pay compensation to Sprint PCS. Otherwise, Sprint PCS would be compensated twice for the same call. (Or three times under AT&T’s argument that Sprint PCS is also compensated by its end-user customers.) Neither the Act nor Federal Communications Commission (“Commission”) rules prohibit Sprint PCS from recovering its costs of terminating AT&T’s long distance traffic.

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<sup>1</sup> The MoSTCG is made up of twenty (20) small telephone companies serving predominately rural areas within the state of Missouri. (*See* Attachment A) The members of the MoSTCG range in size from 240 access lines to 17,040 access lines, and they primarily provide local exchange service to their end-user customers. The members of the MoSTCG are rural telephone companies as defined by the Telecommunications Act of 1996. *See* 47 U.S.C. § 153(37)

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### III. COMMENTS

**1. There is no federal law or Commission policy that prohibits Sprint PCS from recovering from AT&T the costs incurred in terminating AT&T's long distance traffic.**

The MoSTCG agrees with Sprint PCS that neither the Act nor any Commission rule prohibits Sprint PCS from recovering from AT&T the costs incurred in terminating AT&T's long distance traffic. (*See* Sprint PCS comments, p. 7) In fact, Commission rules clearly envision the payment of access charges on wireless calls transmitted by IXC's to LECs:

Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC. . . .<sup>2</sup>

It would be discriminatory not to allow CMRS providers to likewise assess IXC's an access-like charge for the termination of IXC traffic. It is also significant to note that Sprint PCS makes no distinction between inter-MTA and intra-MTA CMRS traffic. In other words, Sprint PCS seeks access compensation on both types of traffic. The MoSTCG agrees that there should be no distinction between inter-MTA and intra-MTA CMRS traffic that is delivered by an IXC

**2. The IXC delivering the call (AT&T) is responsible for compensation, not the ILEC.** The MoSTCG believes that the IXC delivering the call, in this case AT&T, must be responsible for compensating the CMRS carrier. The ILEC cannot also be held responsible to

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<sup>2</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-325, *First Report and Order*, issued Aug. 8, 1996, ¶ 1043 (emphasis added).

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compensate Sprint PCS for the same call. Otherwise, Sprint PCS would be compensated twice for the same call. (Or three times if the Commission accepts AT&T's argument that Sprint PCS is also being compensated for the call by Sprint PCS' own end-user customers. *See* AT&T's Comments, pp. 3, 21) Although AT&T argues that Sprint PCS is already being compensated, AT&T overlooks some important realities under the Act. For example, if AT&T is correct, and Sprint PCS is already being compensated by its air-time charges to its customers, then why are ILECs required to pay reciprocal compensation to Sprint PCS for intra-MTA calls?

**3. Sprint PCS is entitled to compensation for past traffic.** The MoSTCG disagrees with AT&T's argument that Sprint PCS' rates should only be applied prospectively. AT&T's position would allow AT&T (and other IXCs) to benefit from their wrongdoing. In this case, AT&T is being compensated by its end user customers (through toll rates) for carrying the call. AT&T is responsible for compensating other carriers who assist in originating and terminating the call. In the case of calls to Sprint PCS customers, AT&T is not compensating the terminating carrier, contrary to the express demands that it be compensated for this traffic. AT&T should not be awarded for its unlawful conduct. AT&T should be held accountable for its actions and required to pay Sprint PCS for the services AT&T has received.

**4. There is no "de facto" bill and keep arrangement.** AT&T argues that there is a "longstanding bill and keep" or "*de facto* bill and keep" arrangement. (*See* AT&T's Comments, pp. 2, 17) But AT&T can point to such agreement between the parties or any Commission rule which would allow AT&T to unilaterally impose such an agreement upon Sprint PCS. Rather,

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this is a case where Sprint PCS has strenuously objected to AT&T's refusal to pay, and Sprint PCS has pursued its right to be compensated for the use of its network in state court, federal court, and now before the Commission. AT&T (and other IXC's) have taken advantage of the situation through their discriminatory and unlawful conduct, and now AT&T seeks to benefit from this conduct. Moreover, bill and keep is only appropriate in a situation where traffic is balanced and the costs of the carriers are similar:

A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).<sup>3</sup>

In the case of calls to Sprint PCS' customers, there is no balance of traffic. This is a one-way exchange. Sprint PCS has received no reciprocal benefit from AT&T, such as terminating calls from Sprint PCS customers to AT&T customers.

#### **IV. CONCLUSION**

Sprint PCS is entitled to be compensated by AT&T for AT&T's use of the Sprint PCS network. The Commission should ensure that Sprint PCS receives compensation from AT&T for the AT&T traffic terminating to Sprint PCS customers.

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<sup>3</sup> 47 CFR §51.713(b)

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 30<sup>th</sup> day of November, 2001 to the following:

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## **ATTACHMENT A**

BPS Telephone Company  
Cass County Telephone Company  
Citizens Telephone Company  
Craw-Kan Telephone Cooperative, Inc.  
Farber Telephone Company  
Fidelity Telephone Company  
Granby Telephone Company  
Grand River Mutual Telephone Corp.  
Green Hills Telephone Corp.  
Holway Telephone Company  
Iamo Telephone Company  
Kingdom Telephone Company  
KLM Telephone Company  
Lathrop Telephone Company  
McDonald County Telephone Company  
Mark Twain Rural Telephone Company  
Miller Telephone Company  
New Florence Telephone Company  
Peace Valley Telephone Co., Inc.  
Rock Port Telephone Company

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